

HER MAJESTY THE QUEEN

-VS-

GLAD DAY BOOK SHOP ET AL.

ONTARIO COURT OF JUSTICE (GENERAL DIVISION)

SUMMARY CONVICTIONS APPEAL

B E T W E E N:

HER MAJESTY THE QUEEN

- and -

GLAD DAY BOOK SHOP and JEARLD MOLDENHAUER

--- Before THE HONOURABLE JUSTICE F. HAYES at the Court
House Hearing Room # 3, 21st Floor, 180 Dundas Street
West, Toronto, Ontario on May 12, 13, 14 and 15, 1992.

T R I A L P R O C E E D I N G S

A P P E A R A N C E S:

MS. BEVERLY WILTON

Counsel for the Department
of National Revenue for
Customs and Excise

MR. VERN BREWER

MR. CHARLES CAMPBELL and
MS. CLARE BARCLAY

Counsel for the Appellants

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MAY 12, 1992

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THE COURT: Are you ready to proceed on this Glad Day Bookshop?

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MR. CAMPBELL: Yes, Your Honour. I am Charles Campbell and I am the lawyer for Glad Day. With me is Clare Barclay and my friends are here for the Ministry and they are ---

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MS. WILTON: Yes, Your Honour, it is Beverly Wilton and Mr. Vern Brewer appearing for the Deputy Minister of Customs and Excise.

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THE COURT: Yes.

MR. CAMPBELL: Your Honour, perhaps I could speak to the various procedural issues before we get started.

THE COURT: Yes, I would be pleased to hear you.

Preliminary opening of hearing in discussion re the nature of the case to be presented (Not transcribed)

RULING

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THE COURT: In this matter with the assistance of counsel I believe there is almost a common ground as to how this matter should proceed.

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This is an appeal by the appellant from the decision of Deputy Minister of National Revenue for Customs and Excise. With respect to his notification of determination given on July 19, 1990 in respect of materials referenced

5 by control numbers set out in the Notice of Appeal. The
court does not find it necessary for the purpose of this
ruling to delineate the internal administrative and statutory
procedures for the classification of material which is coming
into the country, save and except to say that the last
10 step is the decision of the Deputy Minister and it is that
decision from which this appeal lies under the provisions
of the Act.

15 In this case, the appeal is to the general
division of the Ontario Court of Justice whereas in other
heads of remedy under the Act the appeal would lie to the
Canadian International Trade Commission. It is important
to note in this matter that there is not set out in the
Act any procedural guideline whatsoever with respect to
20 the handling of the appellate process. Therefore, I have
had the assistance of counsel and with their assistance,
I make the following comments and then I shall give the
ruling on how the matter will proceed. We must observe
25 in this matter that we are dealing with a thing, an object.
It is is akin to an in rem proceeding. It is common ground
that there was no evidence by the appellant before the
Deputy Minister, there were no submissions heard by the
Deputy Minister, from the appellant, and as I understand
30 it, there was a ruling by the Deputy Minister, but there

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Ruling - Hayes, J.

5 are no reasons for the ruling which have been filed with
this court. I gather it is common ground that the decision
of the Deputy Minister was communicated to the appellant.
Now, in the ordinary hearing of an appeal there is a trial
record of evidence, submissions and reasons for judgment.
10 In some cases, appeals are heard as a result of a review
of various documents and what interpretation may have been
placed on them by the trier of fact. In this case, by reason
of the nature of the proceeding, we are dealing only with
an object and in any procedure adopted, in view of the fact
15 that heretofore in the proceedings, there has not been an
opportunity for submissions and an opportunity for argument
and that is not contrary to the statute and I pass no
judgment upon the provisions of the statute in that regard.
20 But it is a fact as we approach the procedural aspects of
this appeal, the court considers it important that it has
a determination of this matter with respect to this thing,
although not a trial, and although I am invited to call
25 it a trial de novo, I believe is the format, it must be
a fair hearing. I decline to call it a trial de novo.
The procedure which I am about to follow is a procedure
which I hope will result in a fair hearing to the parties
30 and provide the court with the necessary assistance. To
render what I hope will be an informed judgment applying

5 the law as it exists to the subject matter of the appeal, namely, the items. Therefore, on this matter there has been considerable argument as to who is to go first. In view of what has been said by the crown, I do not find it in this case necessary to make that decision.

10 The ruling will be as follows: the crown will tender and will file with the court an item which has been classified as being prohibited, a copy of the ruling of the Deputy Minister which is appealed from. If there is more than one item, then of course they will all be filed. 15 The crown has indicated that it does not intend to call any evidence on issues 1, 2 and 3 in the Notice of Appeal. The appellant will have the right to call evidence and those witnesses will be subject to cross-examination. I might 20 say that I have had the assistance of counsel for the crown pointing out the procedure before the Trade Commission as provided in the regulations or sections in that regard. I believe that the procedure that I have indicated above 25 is somewhat analogous to that in that that body has the item placed before it and there is the right to call witnesses. So that the Trade Commission then has the benefit of that evidence in reaching its conclusion with respect to whether 30 the items is as being considered in the appeal from the Deputy Minister. Therefore, after hearing that evidence,

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I will then hear submissions and those submissions will include counsel's opinion as to the standard of proof to be used by the court and I must say, that I am not in any way disregarding the judgment of Madam Justice Chapnik in this matter where there was a preliminary motion for a direction, and I of course, will give every consideration with what she said. I might say that she does on page 14 say,

"I would suggest that the legislature, that the intention of the legislature in the developing and implementing within the administrative scheme, including an appeal to this court, was for the standard of proof to be on a balance of probabilities. Upon a simple review of the legislation, I am satisfied that it was not intended that the crown should bear the burden of proving the grounds for prohibiting the importation of goods beyond a reasonable doubt."

So that is her suggestion and this court considers it appropriate that the standard be tried and be fully argued at this hearing and I hope that that will, without putting any trade names to the procedure, result in a fair hearing of this appeal.

In respect to item number 4 in the Notice of Appeal, it states,

"the intention of the subject materials is an unreasonable violation of the appellant's

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Ruling - Hayes, J.

5 "freedom of expression contrary to
Section 2 of the Canadian Charter of Rights
and Freedoms."

10 Mr. Campbell has agreed that the hearing of
that matter, if it is to be heard, will be deferred, and
I think counsel are in agreement on that, until the result
is determined with respect to items 1, 2 and 3. I hope
those guidelines are acceptable.

Madam Crown, are you ready to proceed?

15 MS. WILTON: Yes, Your Honour.

THE COURT: Would you please delineate for
the record very clearly, what it is you are filing.

--- Discussion between the court and counsel for the crown
(not transcribed).

20 --- EXHIBITS NUMBERS 1, 2, & 3 Produced and marked

--- Opening statement by counsel for the appellant re
the nature of the case to be presented (not transcribed).

25 --- Whereupon the court adjourned.

--- Upon resuming at 2:15 p.m.

MR. CAMPBELL: The first witness I would call
is Robert William Payne.

30 ROBERT WILLIAM PAYNE, sworn

R.W. Payne - in-ch. (Campbell)

EXAMINATION-IN-CHIEF BY MR. CAMPBELL:

5 MR. CAMPBELL: Q. Mr. Payne, would you tell the court, please, what position do you hold?

A. I am chairman of the Ontario Film Review Board.

10 Q. What does the Ontario Film Review Board do?

A. The Ontario Film Review Board is mandated by a provincial piece of legislation called the Theatres Act of Ontario to screen and to classify all film and video that is released commercially in the Province of Ontario.

15 Q. Sometimes the word "censor" is used, is this a Board that censors films or how would you use that word, not use the word?

A. The legislation does contain a provision that gives the Board the power to censor, if you will and we, in fact, do on occasion.

20 Q. And would you tell us how long you've had this position?

A. I have been chairman for almost three years.

Q. And prior to being chairman, did you have any association with the Board Review?

25 A. I was on the board as a regular member, a screening panel member for a couple of years prior to my being appointed chairman.

Q. And prior to -- is the job of chairman part-time or a fulltime position?

30 A. Technically it's a part-time position, although in my particular case, I am therefore, at least, parts of all five days of the week. I am to be there two

R.W. Payne - in chf. (Campbell)

5 full and two half days. So officially I am working four days a week.

Q. Now, when you were a member of screening videos, was that a part-time or a fulltime position?

A. It's also a part-time position, sir.

10 Q. Currently how many people are there who would screen videos as members of the Board who are obviously not chairs of that Board?

A. Today there are 22, although the number has varied; in the past we've had as many as 32 I guess over the past two or three years.

15 Q. And in your tenure as chair what is the number of the people at the Board been, is it 22, 32, how does it range?

A. You force me to explain. Each member of the Board is appointed by order in counsel and the order in counsel will have specific time period to it which could be anything from one, two, three years, and because the numbers are appointed on a staggered basis, it is possible, for example, for one member's tenure to run out today and another's to run out next week or whatever. In the meantime, if anybody comes along to replace them, which is not only possible, it is often likely; the numbers on the Board vary. So what I'm saying to you, is that when I took over as chairman in 1989, there were 32 members on the Board at that time, today there are 22.

25 Q. All right. Just another question about yourself. Prior to becoming chair of the Board, what was your profession or occupation?

30 A. I am a broadcaster and writer.

Q. Now, the other people who are on the Board who screen film and video from time to time, how

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are they selected?

5 A. Officially they are appointed by the Lieutenant Governor, in fact, they come to the Board via either the Minister of Consumer and Commercial Relations, which the Board falls under, or the Premier's office in some instances.

10 Q. And are you -- what credentials, if any, do they bring to the job being on the Board?

15 A. Well, part of our mandate is to reflect community standards, and I think in the process of trying to ensure that these community standards are reflected in the appropriate way. The backgrounds of the Board members vary; not only geographically, in that they come from all parts of the Province, but they also represent both genders most of the time equally. They also come from all kinds of racial, cultural, religious backgrounds, if you will. So to the degree a Board of that kind can reflect the bladder community, I think this one does.

20 Q. All right. Can you tell us just mechanically and briefly how the Board functions in reviewing film and video, what do you do?

25 A. Well, you never have a situation where the entire Board is viewing a film or a video. What we do is most of the time work in panels of three; there must be at least three members of the Board that watch each film or each video; on any given day, you would have two or three panels of three people each. Again, all of them watching various videos or various 35 millimetre films and sometimes 16 millimetre films. There are certain internal guidelines, if you will, that we have drawn up over the years that are updated and changed as we go along and when I say changed, only in the sense that community standards seem to shift

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from year to year or whatever.

5 Q. Can I ask you a little bit of those in a minute. So the answer then is, you look at the films in groups of three?

A. That's right.

10 Q. Okay. Now, do you look at films and video and is there any difference in the test or criteria you apply to films and video?

A. No, we apply the same criteria to them.

Q. Now, are you, in your capacity as chair of the Film Review Board, in touch with people in other Provinces who have the same kinds of functions?

15 A. This very morning, the chair of the Alberta Board was in my office visiting for a couple of hours which happens to be a coincidence; on a regular basis, I talk to most of my fellow classification Board heads across the country, I don't know, I suppose once a month or a couple of times a month.

20 Q. And do you compare the standards that are applied in the different Provinces or attempt to?

A. Yes, we do.

Q. And just a little more precisely, how do you attempt to make that comparison?

25 A. Well, each Board publishes or releases at the end of the month all the titles that have gone through for screening and classification in that particular month and each Board sends its own list to the other Boards across the country. There are a total of seven by the way. And just by comparing titles, for example, I mean, just to give you an example, if it's Terminator 2, the film is released
30 almost simultaneously across the country. So each Board

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5 is dealing with it almost at the same time. So one way we compare is by what other Provinces classify each particular film, that's one way we do it. We do it in discussion, I mean, there are a couple of occasions a year where all of us will get together and happened as recently as a month ago in London, England, coincidentally. So there are -- there is a continuous exchanging of notes and comparing systems and talking about various things that we have to deal with on a day-to-day basis.

10 Q. Now, let me -- my next question maybe you were getting to, do you make any efforts to be knowledgeable about the standards of film classification or censorship outside Canada?

15 A. Yes, I do.

Q. And again, briefly, how do you attempt to do that?

20 A. Well, in a number of ways, I suppose; the easiest way to do that is to read material that comes from abroad in terms of, you know, quite often they will appear, in let's say, magazines or whatever, they appeal to either the film and video industry or perhaps that part of Government which deals with film and video, that would be one way. I think I explained to you that a month ago at the end of March, I was in London at an international conference that had delegates from 38 countries that lasted for a whole week. During that week, I had a chance to not only speak with but compare notes with people from those 25 38 countries which included South Africa, Zimbabwe, New Zealand all of Western Europe, what used to be the Soviet Union, Japan, Hong Kong, the United States. So all of those people happened to be at that conference discussing film classification.

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5 Q. All right. The next question may be a little bit mechanical here, so we're clear on the record, what's the difference between classification and censorship, so we all understand?

10 A. Well, classification is -- I suppose there's an element or tiny component of censorship in classification in that classification in Ontario, at least, means clamping age restrictions on certain types of films and videos. So again, not everybody does it like Ontario does, but the systems are comparable. We have four classifications in Ontario, so therefore, we would screen every video, we would screen every film and based on the components of that particular film, we would put it into either a family, 15 parental guidance, adult accompaniment or restricted classification. And each of those has an age element to it. For example, restricted in Ontario means that nobody under the age of 18 should have access to it. In the case of adult accompaniment, it means that anybody under the age of 14 must be accompanied by an adult to access either the film or video. 20

25 Q. All right. And then when we're talking about censorship while I realize that doesn't -- that word doesn't appear in the Theatres Act, but what does that normally understood to mean?

30 A. Well, censorship means, I suppose, what most people assume it to mean; it means banning or rejecting of a piece of material or pieces of the piece of material.

Q. And when you say pieces of the material, mechanically how would you do that? If somebody brought you a film and they were only pieces that you objected to, what would happen?

A. The most common way for it to happen is

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5 that the panel members who had viewed that particular film or video would say "not approved pending eliminations", and then on the back of what amounts to the official report which is called a summary report, on the back of that they would list specifically the one or two scenes that in their opinion were beyond community standards. So in most instances, the distributor whose film or video it is, would
10 comply and make those changes for the purpose of being able to release the product.

Q. All right. Another question, may be obvious, so the record is clear, you're dealing with books or with film and video, not books or magazines, is that
15 right?

A. That's correct, sir.

Q. All right. Now, you've talked about community standards, but be a little bit more specific about the criteria upon which you make your decisions. First of all, in the Theatres Act and its regulations do we find
20 anything that gives guidance about how you might make decisions?

A. Yes, in the regulations specifically it gives a number of criteria that could be applied to the approval or rejection of a particular product. For example, sex mixed with violence that we consider to be degradation or humiliation and abhorrent. Mostly sexual behaviour
25 involving things such as bestiality, necrophilia, the employment of minors in sex films. And there are other criteria such as vomiting and defecation that sometimes go into that mix.

30 MR. CAMPBELL: All right. Your Honour, I might just say I am filing a copy of that particular regulation for your reference.

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THE COURT: Thank you.

5 MR. CAMPBELL: Q. I don't happen to have it right now, but we can get that for you.

10 Mr. Payne, you say that these regulations were things that could be applied. Does the Board regard those regulatory items that you mentioned and the ones that we'll read, do you regard them as definitive and mandatory or is there some flexibility in the way you apply them?

15 A. Well, I suspect that the specifications or regulations were written in a manner that was perhaps sufficiently vague so that it would give us some leeway on making these kinds of decisions. So for example, the word that appears in the sentence immediately prior to those components I just referred to so as the Board may choose to reject a film or video. Some members take that to mean "may not."

20 Q. All right. Well, when you refer to internal guidelines, were you talking about those regulations or is there something else that you have in mind when you refer to internal guidelines?

25 A. No. In addition to those regulations, the Board has its own internal guidelines that are devised on a continuing basis, if you will, or at least they are updated or altered on a continuing basis, things that would occur on an everyday basis. I mean, for example, course language; does that mean that, you know, at various times in the history of the Board there have been situations where, for example, you could not have course language in a film that is rated parental guidance. That was years ago.
30 We now have course language, some course language sometimes in a P.G. film. So that would be the kind of situation that

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5 would be discussed by Board members where eventually we would come up with what we thought was the most appropriate way of handling it.

10 Q. Now, let's zero in on those portions of your guidelines that deal with restricted or, I think I should say of censored provisions of films. In other words, those parts that the Board might rule "no, it cannot be in a particular film" and do you have some -- and obviously in this case we're talking about sexual items -- do you have some guidelines along the lines you've been talking that deal with the degree of explicitness of sex that you would order censored from any particular film?

15 A. No, we have a number of guidelines that pertain to sex films; they don't pertain specifically to the explicitness, no.

20 Q. And I'm going to ask you a little bit about how you develop those, but let's just get to the specific point; is it the Board's position today, or excuse me, what is the Board's position today with respect to whether or not scenes of explicit sex that may be particular, explicit sex, penetration could be included in a film or video that would receive approval from the Board of Review?

25 A. Well, generally speaking the guidelines that we have devised and under which we have been operating for the past 18 months or so say that the explicitness of the sexual activity is not really of any concern to us as long as it involves consenting adults, does not involve minors, does not involve violence of any kind, does not involve bestiality and necrophilia -- did I say minors? And is not in our opinion again degrading.

30 Q. All right. And is there any distinction that the Board draws between film or video that shows

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heterosexual couples as opposed to gay or lesbian couples?

A. No, we make no differentiation between them.

Q And in particular, in videos that show sex -- illicit sexual activity between men, do you make a distinction between anal penetration as opposed to vaginal penetration that we might see in heterosexual activity?

A. No, we don't, but then again we do have some so-called heterosexual films that govern anal penetration as well.

Q. Let me -- you said -- you mentioned 18 months ago that you had revised these -- if you could just take us back to that point, 18 months ago and describe for the court the process that you went through when you did this revision that you referred to?

A. Sure. I guess the process started primarily as a means not to change anything, the motivating factor was one of trying to attain consistency. Up to that point, the Board did not have any written guidelines as it pertains to sexual kinds of material. And so what was happening, because we work in panels and because we have different mind sets among Board members in terms of what's right and what's not right and that kind of thing, depending on which day it was, we were getting decisions on sex films that were all over the map. That was resulting in distributors who, in fact, owned this material complaining to the Board that they didn't know on a day-to-day basis whether their film or their video would get through or whether it would not get through. So as a means as addressing the consistency aspect of it, I initiated a rather lengthy process and when I say a lengthy process, it was done over the course of nine months, it culminated in a weekend retreat in Barrie, Ontario to which we invited a member of "Project P." I assume you

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know who "Project P" is?

5 Q. I think for the record you'd better tell us who "Project P" is?

A. "Project P" being the Ontario Provincial Metro Police Force and that was set up, I guess back in the '70's to seek out and destroy pornography and hate literature.

10 Q. What was the purpose of this weekend retreat?

A. The purpose of the weekend retreat was to come up with guidelines that would give the Board a consistent approach to this kind of material. So in addition to a member of "Project P", we had a distributor, we had a couple of facilitators whose expertise was to take a group of people from a diverse background with diverse opinions and bring them to some common ground. So over the course of the weekend, each Board member was polled as to what it was that he or she could not abide in this kind of material, and so we discussed it and -- I mean, we discussed it and we debated and eventually came out of the weekend with a number of criteria written down on paper which had not happened up until that point. It was done in a weighted system in the sense that there were certain concerns that out-weighed other concerns and at the top of the list were things like violence, the Board members could not abide violence, in those kind of films, they could not abide children, they could not abide many of the things that I referred to earlier. And the least offensive aspect of it according to these Board members was the explicitness of it. So when we got back from that weekend, taking into consideration what I knew the courts to have ruled in obscenity cases, if you will -- by the way, the officer on "Project P" at the time explained to us and the time being

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5 September 15th, 1990, the officer from "Project P" explained to us that "Project P" was not laying charges at that time for material that included only explicit sex involving consenting adults, but they did lay charges if it went beyond that. So I took into consideration what the courts seem to have been saying over the previous couple of years, took into consideration what the other Provinces of Canada were doing and in this regard, basically followed them or allowing sexual explicit material to be cleared by their various Boards and took into consideration what most of the free world was doing in this area, took into consideration the gallop polls that had been conducted and also keeping in mind the Board members are for the most part people who came to the attention of the political apparatus, if you will, by virtue of their work grass roots community organisation work or in some instances, political work which puts them in touch with a whole bunch of other people. So it seemed that the only correct course was to forget about explicitness and concentrate our attentions on those other troublesome components.

10 Q. All right. And again to be clear, in that consensus as you described it 18 months ago, was there a distinction made between gay and straight films and videos?

15 A. Well, it came up for a brief discussion long enough to come to the conclusion that we should not make any differentiation between the two; again keeping in mind that community standards is what we are trying to reflect.

20 MR. CAMPBELL: Your Honour, since we are right in the middle of this witness's -- this part is not as tidy as I would like, I was going to ask Mr. Payne to bring

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5 along with him an explicit video that has in it explicit
sex of a gay nature so that I could demonstrate to you,
if it is required to do so, other than what Mr. Payne has
said that completely explicit sexual material was being
approved by the Board Review. The problem is that since
we were rushing, I didn't get that organized as much as I
would have liked. Now, whether or not you want to see
10 that is one question I had proposed a manner of dealing
with that, and I was going to ask Mr. Payne to give my
articling student, Julie Matthews, a video called
"Hands Down" and I would ask her tomorrow to bring to the
court so that we can have that as an exhibit if the court
wants to see it. It's a little untidy, because I don't want
15 to ask Mr. Payne to come back tomorrow, but that's the only
way I can proceed. I can tell you that I gave to my friend's
predecessors, counsel of the Department of Justice a copy
of this video, it's available in the stores to rent so that
they have noticed that that particular video is one I might
20 refer to and I simply want Mr. Payne to bring to the court
from his files or provide to the court from his files a copy
of this particular video so you will be satisfied that this
is something that was permitted. And I guess the other point
I wanted to make with reference to that video is that in
it not only are there scenes of explicit sex between two
25 men but there are also in one scene there are three people
involved in sexual activity.

I have gone perhaps a little further than
I should have describing it, but I'm just -- I'm over the
edge in terms of arrangement of the evidence.

30 THE COURT: All right. What is your view,
madam?

MS. WILTON: I have no objection to that,

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Your Honour.

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THE COURT: That is satisfactory.

MR. CAMPBELL: Q. All right. Then, Mr. Payne, you will take that request under oath would you confirm that you will provide to Ms Matthews a copy of this video and that she can bring it to court tomorrow?

10

A. I will attempt to do that. We're supposed to be keeping a copy of each of those; it might take a couple of hours to find it, but yes, I will try.

Q. All right, that's all I can ask.

15

I said something, and I don't want to be giving evidence here, but the reference I made to the fact that there were three people in that video, to your recollection in that video, or others like it may be scenes that had been approved where three people were involved in sexual activity, three males were involved in sexual activity?

A. Yes, on occasion that happens.

20

MR. CAMPBELL: Those are all my questions of this witness, Your Honour.

THE COURT: All right. Ms Wilton?

CROSS-EXAMINATION BY MS. WILTON:

25

Q. Yes, Mr. Payne, I have a couple of questions, I won't be too long. The one question I have is, I would like your views on this. Do you believe that explicit sex depicted on a film or in a magazine degrades or dehumanizes the participants?

30

A. Do I believe that?

Q. Yes.

A. No.

Q. No. And you've already described that

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5 you are aware, in fact, fairly familiar with the activities of "Project P", is that correct?

A. That's correct.

Q. Are you familiar with a Detective Sergeant Bob Matthews?

A. Yes, I am.

10 Q. Do you know whether Detective Sergeant Matthews agrees with you on this issue of explicit sex?

MR. CAMPBELL: Your Honour, I object to that hearsay question. If my friend wanted to call in the detective, that might have been some evidence on their side. I'm a little troubled here.

15 THE COURT: Is there anything you want to say?

MS. WILTON: No, I withdraw the question.

THE COURT: There may be other views, but that's up to you.

MS. WILTON: Q. Yes, Your Honour.

20 Do you believe, sir, if -- do you believe, sir, if portrayals of explicit sex cause harm in your opinion?

A. I'm sorry, I didn't understand the question.

Q. Do you believe, in your own view, sir, do you believe that portrayals of explicit sex cause harm?

25 A. No, if I believed that I would not be ---

Q. All right.

A. -- acting in the manner that I am.

30 Q. Sir, based on your knowledge and understanding of "Project P", and as I've asked you, you are familiar with their activities, would you say that you and some of the officers involved in "Project P" share the same view on the issue of explicit sex?

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THE COURT: No, no, no, no, no.
MS. WILTON: Fine, I withdraw the question,
Your Honour.

THE COURT: This man's ---

MS. WILTON: Yes, I understand.

THE COURT: -- within the realm of what is
his position ---

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MS. WILTON: I understand. -- and his
evidence and not the views of others.

Q. Thank you, Your Honour.

Are you familiar with the works of Dolf Zillmann?

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A. I don't believe so, although the name does
seem to ring a slight bell as in a social science researcher,
is that ---

Q. Yes.

A. Yes, okay.

Q. And is that the extent of your knowledge
of Mr. Zillmann?

20

A. It is, because my tendency is to read over-
views there, that is several overviews put out by various
researchers of the research that has gone into it so there
are only two or three of these researchers that are really
familiar to me.

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Q. And this is not one of them?

A. And he's not one of them.

Q. All right. Now, sir, do you write a column
for the Toronto Sun?

A. Yes, I do.

30

Q. And sir, do you recently recall a column
in which you questioned the issue of whether or not a
convicted rapist, Mike Tyson, was too severely punished in
terms of his sentence?

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5 A. I did write a column about Michael Tyson, yes.

Q. Well, could you just tell us a little bit about what was in that column?

10 A. The essence of it or, at least, the point that I was trying to get across was that in my opinion, and keeping in mind that a column is a personal opinion, in my opinion, we seem to approach these matters involving rape or domestic violence in black and white terms and I was trying to suggest that there are perhaps in some instances some grey areas.

15 Q. I see. Now, sir, in any of the films that you reviewed or that perhaps your Board reviewed that involves explicit sex in films not involving minors and not involving consenting adults that were in fact degrading?

A. Can I think of any situations ---

Q. Are there a number of situations where you come across that in your review of films?

20 A. I think I was trying to explain earlier in answer to your question that something that is considered degrading by the board does not clear the board.

Q. I see. How would you define degrading?

25 A. Well, again it is awfully tough to define in that the Supreme Court of Canada up until just a couple of months ago didn't define what degrading was and people who are that brilliant can't do it, what possibly can I do, but there are instances, I think, that we -- I mean, I can give you anecdotal evidence if you wish ---

Q. Please.

30 A. -- for example, one of these videos came through a couple of weeks ago and it involved a man and a woman in sexual activity, a man took out a chicken bone and

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5 rubbed it on the woman's vagina, so we unanimously felt that this was degrading. So that would be the kind of thing that we would cut out of the film.

Q. So what you're saying then is that you tend to define degrading on a film by film basis rather than setting out a kind of a guideline for yourselves, is that correct?

10 A. That's right. But again, I -- you know, my everyday role does not involve screening films. People who are screening the films are the other Board members and again, keeping in mind that we come up with the various guidelines and so on, so I think we feel, as a Board, we have a general idea of what degrading is, what dehumanizing is.

15 Q. I see, and you have come up with this general idea, I take it, on the basis of your consultations with each other, is that correct?

A. That's correct.

20 Q. I see. Have you made reference to any secondary materials in coming up with this particular guideline?

25 A. I am constantly reading, as I say, research into pornography; I read transcripts of Court Judgments involving obscenity, I -- you know, Bonerstein, Professor Bonerstein is fairly well known in the area; he was in London a month ago, I not only talked to him but in fact, listened to a rather lengthy presentation that he made. So I do that kind of thing and pass it on to my Board members in the best way.

30 Q. I see. But in essence, you develop amongst yourselves based on your own discussions and some outside materials, your own guidelines?

A. Well, the final decisions are made by ourselves, but again, we don't do it in a vacuum, we try and

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5 access as much as -- information as is possible to access to make those kinds of decisions.

10 Q. I understand. Now, sir, you have indicated that the Supreme Court of Canada, brilliant as they are, haven't attempted to define degrading and dehumanizing, that you perhaps would be perhaps foolish to do so. I would ask you, sir, to listen to this statement from Madam Justice Wilson from the Supreme Court of Canada and ask you if you agree with this statement. This comes from Town Cinema and it reads as follows,

15 "The most that can be said, I think, is that the public has concluded that exposure to material which degrades the human dimensions of life to a sub-human or merely physical dimension and thereby contributes to a process of moral desensitization must be harmful in some way."

20 Would you agree or disagree with that, sir?

A. I don't agree with it.

Q. You don't agree with that?

THE COURT: You don't what?

THE WITNESS: I do not agree with that. I think the Town Cinema case was in 1984, was it not?

25 MS. WILTON: Q. I believe it was 1985. But the issue is, whether or not you agree with it?

A. No, there is to my knowledge, no research that is universally accepted that supports that view.

30 Q. I see. Now, sir, given that you have done a fair amount of consulting as you have indicated and you have sought to consider some of the outside sources, if I put to you a statement by Professor Zillmann, of whom you are aware but are not particularly familiar ---

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THE COURT: What is the name of the professor?
MS. WILTON: His name is Dolf Zillmann, Your Honour.

THE COURT: Spell it.

MS. WILTON: Q. D-O-L-F Z-I-L-L-M-A-N-N.

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And what I'm going to describe is a conclusion he comes to as a result of his research on papers for the Surgeon General Everett Cootes Commission on a workshop on pornography, public health in 1986. Dr. Zillmann concluded that prolonged exposure by participants, both male and female, to explicit depictions of sex not involving violence tended to result in the trivialization to that particular offence or the offence of rape on both, not only the male viewers but also the female viewers and there was a tendency on the part of the male viewers to seek a lower sentence or believe a lower sentence would be appropriate for rape as a result of the exposure to non violent sex. That is the statement or a conclusion that Dr. Zillmann comes to after extensive research and I would ask you, sir, whether you agree or disagree with that?

A. In yes or no terms, or ---

Q. As well as you can.

25

30

A. I know because I have read a lot of this material, but for example, the Commission that you are referring to is commonly known as the Meese Commission and of all the major commissions that have been set up -- we had the Frazer Commission in 1985 here in Canada, we had the Meese Commission in 1979 in Britain; there was the Williams Commission and in 1970, there was a commission -- I can't remember precisely what its name was -- but it was appointed by Lyndon Johnson who at the time was President in 1968 and the report came out in 1970. Of all of those, the Meese

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5 Commission is the one that is least respected. The reason it is least respected, is that the people on the Commission were chosen on the basis of higher statements that put them firmly on the anti pornography side.

10 Q. Sir, I should indicate that this is, in fact, a quote, not from the Meese Commission but it was the Attorney General's Commission, but this is, in fact, the Attorney General, this is the surgeon?

A. Well, the Attorney General was in fact the Meese.

Q. I understand that, but the difference is that it is the Surgeon General, Edmond Cootes ---

15 A. Oh, I'm sorry.

Q. -- so we're talking about two different studies?

20 A. Well, perhaps this was not a major commission, because I'm not familiar with that. But the point I was trying to make is that if you go out there and read all the research that has been done you will find research that will support whatever argument you want to make. So the question is not whether or not this person is right, the question is, does it stand -- you know, you people call it social science research, it is not social science unless it can be replicated. I mean, if the findings of one person's study cannot be replicated, come to the same conclusions on several occasions, most people don't regard it as particularly relevant.

25 Q. So I guess I could say to you, sir, that your consultation of the various experts in this social science research area is really only for your own interest because what you are saying is that it is not an exact science but really you will come to the conclusion you will

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5 come to because there are many opinions out there as there are people giving them, is that what you are saying?

A. No, that's not what I'm saying.

Q. Could you elaborate?

10 A. What I'm saying is that I place great faith in those few publications, one of which was put out by the British Home Office in 1990 titled "Pornography - It's Impacts and Influences." There was another one put out by the Canadian Federal Department of Justice which in essence is an overview of all the research that has been done into the area and they will come -- they will take specific pieces of research and list the general findings and then they will give arguments pro and con as to whether these seem to jive with other research that has been done into that area. So those are the kinds of things that I put in my paper.

15 Q. I see. Sir, do you believe that your decision and your Board's decision to allow a dissemination in society of Ontario, in any event, of explicit sex as long as it isn't degrading or dehumanizing as far as you define those terms, do you believe that those actions in essence reflect the community standard in this Province?

A. Yes, I do, we have gallop polls ---

20 THE COURT: I'm sorry, I can't hear you.

25 THE WITNESS: We have gallop polls that were done -- the most recent gallop poll was in January of this year, the results appeared in the Toronto Star in early February of this year. Which indicates a majority, and it's a fairly large majority, 55 to 38 or something like that -- not something like that, it was 55 to 38, wanting access, Canadians wanting access to this kind of material. Virtually every major newspaper in Ontario have written editorials in support of the Ontario Film Review Boards policies and

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5 I'm not talking about individual writers, I'm talking about
a newspaper editorial board taking a position. I understand
again from reading through court judgments that community
standards in Canada, at least in legal terms, are decided
on a Canada-wide basis as opposed to on the basis of
individual communities, so if we have nine Provinces of
10 Canada that allow this material onto their shelves and on
to the market place, how could Ontario possibly argue that
it was within community standards not to allow this material
to the market place.

15 MS. WILTON: Q. It would be fair to say,
wouldn't it, sir, we have nine Provinces according to your
evidence that have film boards that allow this particular
material to be disseminated in the Province, in any event?

A. There are seven film boards of Ontario --
(inaudible).

20 Q. Going back to your point about the Gallop
polls, I guess you'll agree with me and I'm sure that you've
read, too, that the various polls that one reads in the
newspapers aren't always accurate, witness the polls that
predicted a Tory loss in England, would agree with me that
they're not always to be relied upon?

A. Yes, I agree that they're ---

Q. Thank you.

25 A. -- not always to be relied upon.

THE COURT: Re-examination?

MR. CAMPBELL: I have no re-examination.

30 THE COURT: Just by way of explanation, sir,
the Gallop Polls to which you make reference, what is the
geographic scope of those polls?

THE WITNESS: This is a question to me?

THE COURT: Yes.

K. Raye - in-ch. (Campbell)

THE WITNESS: Your Honour, it is a coast to coast poll.

THE COURT: In Canada?

THE WITNESS: Yes.

THE COURT: All right, thank you.

--- Whereupon the court recessed for lunch

--- Upon resuming at 3:30 p.m.

MR. CAMPBELL: I call Kyle Raye.

KYLE RAYE, sworn

EXAMINATION-IN-CHIEF BY MR. CAMPBELL:

Q. Mr. Raye, what position to you hold, please?

A. I'm the City councillor for Ward 6 which is the downtown City Council constituency ---

Q. Of the City of Toronto?

A. In the City of Toronto.

Q. All right, we'll get to that in a minute.

Can you just give us a very brief summary of your work history up until a point when you were elected as councillor?

A. From 1987 onward, I was the Executive Director of the 519 Church Street Community Centre which is a city funded community centre located in downtown Toronto, near the corner of Church and Wellesley Streets and that community centre provided services, assistance, advice, referral, meeting space to the community at large in the City of Toronto and one can say specifically to the lesbian and gay community in the City of Toronto.

K. Raye - in-ch. (Campbell)

Q. And prior to that, where did you work?

A. I worked at University of Totonto Library.

Q. Just for the record, going back to your college education, what's your academic background?

A. I have taught as a historian, I have a Midieval History degree and I have a Masters in library Science from the University of Toronto; my history degree is from Birmingham University in England.

Q. All right. Let's go to your tenure at the 519. Could you describe for us in a brief but general way what would be the nature of the job that you did when you were there?

A. I had two jobs there, one is programme coordinator and one is the executive director, so I will telescope them in describing them; both of these jobs dealt with working with the community. The 519 is seen as the lifeline for many people in the North Jarvis neighbourhood, many of whom are lesbian and gay. I mean, it's the lifeline for many people in the lesbian and gay community across the city. So we would deal with crisis problems, we would refer people to counselling, we would deal with violence in the neighbourhood, we would deal with providing children's programmes, senior's programmes, recreational programmes in the building; we ran a summer camp for kids in the neighbourhood. So the interests and problems of the inner city neighbourhood came to our doorstep and we were open from 9:00 in the morning until 10:30 at night. So you had a vast array of people coming in. Last year we had 135,000 people use the 519 from the neighbourhood using our programmes, getting advice from our staff for referral to other agencies.

Q. And is there any way you can estimate the breakdown between the programmes that were specifically

K. Raye - in-ch. (Campbell)

designated or thought to appeal to the lesbian and gay community as opposed to the balance of the population?

A. Yes, in fact, we kept statistics quite closely and I think in about 1988/89 we wrote at our programming, we found that about 40 per cent of the programmes at the 519 were accessible or named lesbian and gay programmes and so, it didn't exclude others, but they weredesigned to provide services to the lesbian and gay community.

Q. And of the portion of the programmes that were not for the lesbian and gay community, were there any that were dealing with, since this case is about, potentially about sexual violence and violence, were there programmes dealing with issues of interest to women dealing with sexual violence?

A. Definitely. We ran programmes, counselling programmes for women, we ran Wen Do clases which is a programme that came about to provide women with a self-defence technique in dealing with violence on the street and sexual violence. The counselling which we provide at the 519 often would deal with violence against women; we would refer people to the Rape Crisis Centre or to the Barbara Schliker Clinic or to Netrac or Safe City in the City of Toronto. There were a host of programmes that we were able to access for people and we would either get them into a counselling session at the 519 or send them into a programme, of course more in depth and so some of it was done on site, some of it was referred out.

Q. Now, then, you were elected as counsellor in, the date, please?

A. Oh, dear, sometime in November of 1991.

Q. November of '91?

K. Raye - in-ch. (Campbell)

A. Yes.

5 Q. Could you describe briefly the constituency that you serve as counsellor?

10 A. The constituency that I have and my staff work with, we've divided it into three parts, the seven part is the St. Lawrence neighbourhood which is a 1970's development and has a lot of condos and co-ops and social housing. Then east downtown, which is east of Yonge Street south of Carlton and is another neighbourhood which is about to blossom, in fact, Jarvis Street which is larger than this, entire project, we have large developments happening there; the City of Toronto sees that to be the new development area for residential in the city. The north end, north of Carlton is called by
15 planners mid, south mid town or north Jarvis and that neighbourhood is probably the largest gay neighbourhood in the country, it is one of the densest census tracts in the country; Charles Street which runs right through Ward 6 at the north end is one of the densest in the city as well and it is highly inhabited by gay men and lesbians.

20 Q. And then could you describe again, generally but briefly what is the nature of your functions at City Hall, what are you doing on a day-to-day basis?

25 A. I'm in meetings all day long, but my staff and working with people in the community who for the most part, are unhappy about the services, Government services, their services from their landlords and problems of, social problems in their lives and in the constituency. So most of the problems in Ward 6 end up coming to our -- to my office. I think it's safe to say that for many people the City
30 counsellor's position is one of the more accessible levels of Government, City Hall is just on the side of the Ward; people know their City counsellor, they often don't know

K. Raye - in-ch. (Campbell)

5 who their Metro, their Provincial or their Federal, but they know how to get in touch with City Hall, and so they end up calling my office. So I field a host of questions, a lot of them social, a lot of them Government related.

10 Q. Now, again going back, and let me ask you about your experience, and this will cover both the period when you were Director of the 519 and also while you were at City Hall, have you had any involvement with the gay community and political issues in that for those individuals?

A. For those -- in my constituency?

15 Q. Yes, or in your life or elsewhere, I just want to know what you know about that subject?

A. Well when I came back to Canada from having
20 studied in Britain, I came to Toronto and it happened at the same time as the Bath raids, so I became quite politicized at the same time before getting back to Canada and getting involved in the gay and lesbian movement. So I worked since 1981 in the community development issues in the downtown area affecting the gay and lesbian community, I co-ordinated lesbian and gay pride day from 1981 to '87. I worked with teams that were successful in lobbying the Provincial Government amending in 1986 the Human Rights Code with Bill 7 to include sexual orientation and the Provincial Code and I have worked on the Aids Memorial at the 519, given that 40 per
25 cent of the programming and users were gay and lesbian. People would come to my office with problems, personal problems and with constituency or community problems which would have to be resolved and I often would be helping people work them out or referring them to other agencies. A lot of the work that I do is centred on working in the lesbian and gay
30 community around community issues and individual issues.

Q. All right. I want to ask you based on

K. Raye - in-ch. (Campbell)

5 your experience your opinion on this subject. Can you tell us is there a concern that you are aware of within the gay community with respect to violence or abusive sexual behaviour between gay men?

A. Violence on -- would you like to say that again, I just -- it was very long and I ---

10 Q. I'm sorry, I didn't mean to make it too complicated. Based on your experience that you have described, I want to have your opinion on this particular point, but I'd like your observations about whether or not within that gay community there is a problem with respect to violence between gay men, and there may be a second part of that first problem or the perception of a problem with respect to abusive
15 sexual behaviour between gay men?

A. In the 12 years of working in the Toronto lesbian and gay community, I have never heard or received a case of a problem or perceived problem in the lesbian and gay community around gay men and violence. There has not
20 been in my experience, I have not received a complaint, I have not seen it raised as an issue, the issue of violence in the gay community.

Q. Now, you mentioned, I think, counselling for women or rape crisis centres, I think you probably understand what those institutions are, are there institutions
25 like that that are intended to assist a gay man?

A. I am very familiar with the programmes in the women's community and in fact, helped institute some of the same kind of programmes in the gay community to protect gay men and lesbians from violence outside our community. People would come in to the downtown area and attack gay men and lesbians merely because they are gay or lesbian and we
30 used some of the techniques used by the women's movement

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5 for instance, the whistle campaign; everyone carries a
whistle now to alert the people that there's -- it's
usually straight young men who come into the neighbourhood
and attack gay men and lesbians. So I am quite familiar
with the programmes in the women's community; We ran
Wen Do at 519 and I know of no programmes in our community
10 that could be parallel to the programmes that have been
set up by the women's movement. We just don't see that kind
of violence in our community, it doesn't -- it just has never
been discussed, it has not been -- even in the latest case
it has not been brought forward.

15 Q. I guess the second version of the question
is whether or not the issue of abusive sexual behaviour was
an issue between men the same way it is sometimes said to
be an issue between men and women?

20 A. Well, one of the precepts of gay sex,
gay relationships is consensual sex and people enter into
agreements in having sex and I have never had or heard a
case of someone feeling that they had been abused in the
sexual experience that they're -- people enter into it because
they're both having interest and in the gay community, I
have not seen that played out in any other way other than
in consensual sexual experience that that's talking about
the gay community in downtown Toronto.

25 Q. All right. Let me ask you another
question that is again your opinion; can you tell us, based
on your experience and your knowledge of your constituency
and your community, would there be a consensus or a view
within the gay community, gay and lesbian community over
30 what people might call degrading sex or degrading sexual
activity?

A. I can think of two possible areas where

K. Raye - cr-ex. (Brewer)

5 the community would come together on and this refers back to my previous comment and that's the lack of a consensual sexual experience, that would be considered by many people to be degrading. A second one which is talked about in the community is the issue of pedophilia which happens in the straight community as well as the gay community and I think pedophilia would fall into that category as being degrading to many people in the lesbian and gay community.

10 MR. CAMPBELL: I have no further questions.

THE COURT: Mr. Brewer?

CROSS-EXAMINATION BY MR. BREWER:

15 Q. Mr. Raye, I have your resume here, and just before you entered work in the 519 Church Street Community Centre, you were a library technician?

A. I am a librarian, I have a library -- Masters of Library Science.

20 Q. Okay. Have you ever done any work in a professional capacity and research in violence among the gay community?

A. I have done some bibliographic work as part of my university training in Library Science.

Q. But personal research is what I'm asking?

25 A. Well, personal bibliographic research I did. I would have to confide with the evidence and I chose to do it on lesbian and gay issue; that was my personal experience in doing work.

30 Q. But you yourself have not gone out and done polls and surveys and conducted experiments and of exposure of people to violence?

A. No, I have not.

K. Raye - cr-ex. (Brewer)

5 Q. So in essence what we're dealing with here is your observation and your experience under these jobs as a director of the community centre and a local politician?

A. Correct.

Q. All right.

A. And as a gay male.

10 Q. Now, you indicated your work was with the 519 Church Street Community Centre. Could you please advise the court as to what the general population size this community centre serves?

A. Who?

15 Q. Effectively, as opposed to its intentions, what is the effective population served by the community centre?

A. Population? Well, the population, its boundaries were geographically determined and the boundaries of Bloor Street, Bay Street, Gerrard and Parliament Street.

Q. So a small part of downtown then?

A. Yes, it was.

20 Q. Okay. And did you work at any other community centres during that time?

A. No, I didn't.

Q. So your work was restricted to one community centre servicing a few blocks in downtown Toronto?

25 A. That's correct, although I was involved in an organization called A.H.O.C. which represented other community -- which was umbrella organization which was -- involved other community centres across the city.

30 Q. But again your evidence is based on personal experience and observations, but does that work with those other groups give you personal observations as to these problems?

A. The discussions and meetings I would have

K. Raye - cr-ex. (Brewer)

with other executive directors from those community centres would be pertinent to this.

Q. But that would be what they told you, not what you saw?

A. That's right, but they would say they were perhaps having a problem that would involve a gay employee or lesbian living in the neighbourhood and would ask me advice as to how to refer them to services.

Q. What I'm trying to establish, Mr. Raye, is that your testimony here is credibility based on what you saw, I'm trying to establish clearly in my mind what, in fact, you did observe personally? So what I understand so far is you to say is your personal experience, your personal view of things was with respect to one community centre?

A. That's correct.

Q. Okay. Is there anything else that you personally saw, activities as opposed to heard from other people as happening in their area?

A. I can only refer to what they had requested me to assist them with and that's as far as I can go.

Q. Okay. Now, you're also a counsellor for Ward 6?

A. That's correct.

Q. Would you please provide the boundaries for Ward 6, please?

A. Ward 6, the northern boundary is Bloor, the eastern boundary is Sherbourne and at King Street, jogs out to Parliament and then down to the lake. The lake is the southern boundary and Bay Street is the western boundary.

Q. Okay. So again it is part of a downtown Toronto area?

A. That's correct.

K. Raye - cr-ex. (Brewer)

5 Q. Now, would you agree that there are other communities within Toronto which are not encompassed by Ward 6, are not serviced by this community centre that would have a significant gay population?

10 A. Well, 'significant' is a statistical term and at some point it is significant and at some point it is a marginal or minimal population and I would say that in the area that I worked and where I now represent, there is a significant lesbian and gay population, but there are other pockets of lesbian and gay people in the city, but I don't know how significant they are within their wards.

15 Q. So there are other wards, other community centres that would service other gay population groups?

A. No.

Q. There are no toher wards where gays live?

A. Yes, but ---

20 Q. There are no other community centres where gays could go if they had a problem?

25 A. But if they do go there, the community centre will call the 519 for assistance. Many community centres don't want to have gay and lesbian programming and so they often will send them to us and we have to then try and find space or meeting rooms for them. There is still a great stigma in the community at large against our community.

30 Q. Your experience at 519 is based on people coming to the centre, is that correct, they have to initiate the procedure?

A. Oh, no, it works both ways. People would call ---

Q. Yes?

A. -- people would arrive, but also we do

K. Raye - cr-ex. (Brewer)

5 community development work which we would go out and having determined a problem or issue or look at what students we had available to work with, would set programmes or set initiatives and we would then do community development work, seeing if there were people who needed a particular programme.

10 Q. Well, my problem, sir, is that people have to tell you there is a problem first before you know there is a problem, is that correct? So if they don't tell you there's a problem, you don't know about it?

15 A. Well, we have programmes that people don't necessarily come and say they have a problem, but we have identified as being a problem and that we will set up and these people will register and come to the meetings or have an interest.

20 Q. Is it possible then, sir, that there are people in this neighbourhood who are the victims of an abusive homosexual relationship that you don't know about, is that possible?

A. That is possible.

25 Q. So in fact, you are seeing a certain segment; you can't come to court today and say this problem doesn't exist?

30 A. I will be uncomfortable saying that, because if people were having that problem, they would most likely come to the 519 for counselling or referral and I would be aware of that.

Q. Okay. But again, you can't say to this court this problem doesn't exist?

A. I can't -- I can't say they're going elsewhere, I can't say that it exists, I just know that we don't receive those kinds of requests for service from gay men.

K. Raye - cr-ex. (Brewer)

5 Q. And will you concede, sir, that there are significant gay communities located elsewhere in Canada?

A. Definitely.

Q. And your experience of these communities are not within the realm of your knowledge, personal knowledge as what you saw?

A. Personal knowledge ---

10 Q. What you saw?

A. -- what I read in lesbian and gay newspapers is all I have.

Q. All right. But you have no working experience in Vancouver?

A. No.

15 Q. Ottawa?

A. Montreal, no.

Q. Sir, your only experience with respect to the gay community is in a part of Toronto and that's it?

20 A. I've travelled in my -- I have experiences as being a gay man in other parts of Canada, other parts of the world, but I think it's unfair for you to try and say that I only know the city by these few blocks. The gay community is not defined geographically, it's a shared experience.

25 Q. But my questions that I have put to you as - in your capacity as a director equally apply to your capacity as a politician; again as a politician can you say that there is no problem in your ward with abusive relationships among homosexuals?

30 A. I can say it in my experience that I have not received either as executive director or as city Counsellor for Ward 6 complaints from gay men being victims of violence.

K. Raye - cr-ex (Brewer)

5 Q. But can you say there is no problem, absolutely there is no instances of this happening?

A. I can't say absolutely, no, that's true.

Q. One further area I wish to ask questions on; do you agree that certain sexual practices among homosexuals involve forms of what would appear to be violent or rough behaviour?

10 A. You mean, in actuality?

Q. In actuality, whether it's on consent or not; the fact that there are some practices in the community which by all appearances would appear to be rough or somewhat violent?

15 A. I would use the term "rough", but I feel the term "violence" is loaded, because it involves for me non -- it's non-consensual, so I would say, yes, there is "rough", sex is available in the gay community, but I wouldn't necessarily say it's violent.

Q. Okay. Now, what is "rough" sex, sir?

20 A. "Rough"-- do you want me to ---

Q. Yes, an example?

A. "Rough" sex could involve spanking, could involve fisting ---

Q. What is "fisting", sir?

25 A. "Fisting" is the insertion of the hand into the anus.

Q. As a fist?

A. Not necessarily.

Q. What else, any other traits of this type of sexual practice?

30 A. "Rough" -- it is difficult -- "rough" can be playful at the same time, so I'm having a hard time. There is "rough" sex.

K. Payne - cr-ex. (Brewer)

Q. "Bondage", would that be one, where a restraint is imposed upon one ---

A. That could be. Many people -- some people may see that as rough, but others enjoy it, so -- I don't see it as rough.

Q. And in your opinion and the opinion of the people that you have observed, this is not regarded as degrading?

A. No.

Q. It is not regarded as dehumanizing?

A. No.

Q. And you don't find this as harmful conduct?

A. No, not at all.

MR. BREWER: Thank you, those are my questions, Your Honour.

THE COURT: Re-examination, if any?

MR. CAMPBELL: I have no questions, Your Honour. Thank you.

THE COURT: Next witness.

MR. CAMPBELL: Your Honour, I'm afraid that is the only witness I have for today, so I ask that we adjourn until tomorrow morning.

THE COURT: All right. Make sure you have everybody lined up.

MR. CAMPBELL: Everybody will be organized by tomorrow.

THE COURT: We will make use of what time that is available to us.

--- Whereupon the court adjourned until May 13, 1992.

CERTIFIED:



Gary Ainsworth
Official Court Reporter

